

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATHANIEL DWAYNE CAETANO,
Plaintiff,
v.
INTERNAL REVENUE SERVICE,
Defendant.

No. 2:23-cv-01521-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has filed a motion for leave to proceed in forma pauperis. ECF No. 2.

The Prison Litigation Reform Act of 1995 permits any court of the United States to authorize the commencement and prosecution of any suit without prepayment of fees by a person who submits an affidavit indicating that the person is unable to pay such fees; however,

[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The court takes judicial notice¹ of the following lawsuits previously filed

¹ Judicial notice may be taken of court records. *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff'd*, 645 F.2d 699 (9th Cir.), *cert. denied*, 454 U.S. 1126

1 by plaintiff:

2 (1) *Caetano v. Internal Revenue Service, et al.*, E.D. Cal. No. 1:22-cv-00837-JLT-SAB,
3 which was dismissed as frivolous and for failure to state a claim on June 20, 2023.

4 (2) *Caetano v. Board of State and Community Corrections, et al.*, E.D. Cal. No. 1:22-cv-
5 00687-JLT-SKO, which was dismissed for failure to state a claim on May 30, 2023.

6 (3) *Caetano v. Depository Trust Company, et al.*, E.D. Cal. No. 1:22-cv-00679-JLT-SKO,
7 which was dismissed as frivolous on September 30, 2022.

8 The court's review of the above records reveals that on at least three occasions, lawsuits
9 filed by plaintiff have been dismissed on the grounds that they were frivolous or malicious or
10 failed to state a claim upon which relief may be granted. Therefore, this court finds that plaintiff
11 is precluded from proceeding in forma pauperis in this action unless plaintiff is "under imminent
12 danger of serious physical injury." 28 U.S.C. § 1915(g). To meet the exception, plaintiff must
13 have alleged facts that demonstrate that he was "under imminent danger of serious physical
14 injury" at the time of filing the complaint. *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir.
15 2007) (holding that "it is the circumstances at the time of the filing of the complaint that matters
16 for purposes of the 'imminent danger' exception under § 1915(g).").

17 Plaintiff has not alleged any facts which suggest that he is under imminent danger of
18 serious physical injury. Rather, plaintiff claims that either the Internal Revenue Service or the
19 California Department of Corrections and Rehabilitation is withholding a check in excess of \$43
20 million from him. ECF No. 1.

21 Because the court finds that plaintiff has not made the requisite showing of "imminent
22 danger" to qualify for an exception to the "three strikes" bar under 1915(g), plaintiff should be
23 denied in forma pauperis status and be required to pay the full filing fee in order to proceed with
24 this action.

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28 (1981).

1 Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a District
2 Judge to this action. It is further RECOMMENDED that:

- 3 1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED;
4 2. Plaintiff be directed to pay the filing of \$402.00 in full within fourteen days after any
5 order adopting these findings and recommendations and admonished that failure to timely comply
6 will result in dismissal of this action.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
12 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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15 Dated: November 28, 2023


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE